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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Washington, D.C., Vermont and Virginia.

CC Docket No. 99–24
DA 99–224

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

In these Reply Comments, GSA responds to comments on the Petition by the Bell Atlantic Telephone Companies ("Bell Atlantic") asking the Commission to forbear from applying rate structure, rate level and tariff filing rules for special access services in 12 state jurisdictions. Like GSA, most commenting parties challenge assertions that Bell Atlantic needs additional pricing flexibility for special access services.

In their comments, nearly all of the carrier parties explained that Bell Atlantic understates the extent of its continuing market power. Even where Bell Atlantic has lost a part of the "retail" market, in nearly all cases that carrier still provides the facilities to the "competitors" who in turn provide services to end users. Moreover, Bell Atlantic places significant barriers to the development of more competition through its policies concerning collocation, unbundled network elements, and access to operations support systems. Elimination of rate level and structure rules will further empower Bell Atlantic in these anti–competitive activities.

Moreover, several comments in response to the Notice demonstrate that Bell Atlantic already has great flexibility in pricing special access services, so that any claims that the company has a pressing need for even greater authority are unfounded. In addition, comments focusing specifically on digital subscriber line ("DSL") technologies and video services demonstrate that Bell Atlantic's attempts to gain pricing flexibility for these types of special access services are unjustified.

Finally, while additional pricing flexibility is not necessary, GSA supports Bell Atlantic's proposals concerning tariff filing regulations. Most commenting parties did not focus directly on this aspect of the Petition, but GSA explains that tariffing flexibility is vital because it will result in more responses to competitive bid requests.

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REPLY COMMENTS
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GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Public Notice ("Notice") released on January 21, 1999. The Notice invites comments and replies on a Petition by the Bell Atlantic Telephone Companies ("Bell Atlantic") asking the Commission to forbear from applying the rate structure, rate level and tariff filing rules for special access services in 12 state jurisdictions. Bell Atlantic states that its Petition satisfies the criteria for forbearance in the Telecommunications Act of 1996 because the company lacks market power for special access services in those jurisdictions.[1]

I. INTRODUCTION

Bell Atlantic proposes forbearance from regulatory surveillance of special access services in 12 jurisdictions that encompass all states served by the carrier

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1 Notice, para. 1, citing Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

except Maine and West Virginia.[2] Bell Atlantic's special access services include "private line" services provided to end users, as well as dedicated transport facilities provided to interexchange carriers. As Bell Atlantic explains, special access services employ facilities connecting end users with switching centers and the Points of Presence ("POPs") of interexchange carriers, and facilities between POPs, or between a POP and a central office or tandem switch. Special access services are used primarily by business customers, including the Federal government and state governments, as well as interexchange carriers.[3]

On March 18, 1999, GSA submitted Comments addressing the Petition. In its Comments, GSA recommended that the Commission adopt the company's proposals to forbear from applying tariff filing rules for these services. However, GSA urged the Commission to continue to enforce the rate structure and level rules applicable to carriers under price cap regulation. As GSA explained, Bell Atlantic's proposal to eliminate the requirements to abide by these rules would have the effect of dismantling the price cap system. Moreover, this forbearance would reduce protections that consumers still need in view of the present level of competition throughout Bell Atlantic's service area.

Seventeen additional parties submitted comments in response to the Notice. These parties include:

- 10 local exchange carriers ("LECs") and exchange carrier associations;
- 3 interexchange carriers ("IXCs");
- 2 cable television firms;
- 4 associations of carriers; and

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2 Petition, p. 1.

3 *Id.*, Attachment C, para. 13.

- 2 end users of telecommunications services.

In these Reply Comments, GSA responds to the positions advanced by these parties.

II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT BELL ATLANTIC NEEDS ADDITIONAL PRICING FLEXIBILITY FOR SPECIAL ACCESS SERVICES.

A. Carrier parties report that Bell Atlantic has greatly understated its market power.

All of the comments by carrier parties, except those submitted by the United States Telephone Association ("USTA"), explain that Bell Atlantic understates its market power in providing special access services throughout its service area.[4] Thus, the carrier parties overwhelmingly agree with GSA that it is vital to maintain the price cap framework for Bell Atlantic's special access services.

In supporting Bell Atlantic's proposals, USTA contends that the Petition provides "compelling evidence" that the company faces intense competition in providing special access services in each of the 12 jurisdictions.[5] According to USTA, Bell Atlantic demonstrates that its competitors have facilities in place that allow them to reach customers who account for approximately 90 percent of Bell Atlantic's special

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4 Comments of Association for Local Telecommunications Services ("ALTS"), pp. 5–8; Opposition of AT&T Corp. ("AT&T"), pp. 4–14; Comments of Cablevision Lightpath, Inc. ("Lightpath"), pp. 1–4; Opposition of Competitive Telecommunications Association/America's Carriers Telecommunication Association ("CTIA"), pp. 3–8; Joint Comments of CTSI, Inc. and RCN Telecom Services, Inc. ("CTSI/RCN"), pp. 6–10; Comments of Hyperion Telecommunications, Inc. ("Hyperion"), pp. 5–7; Comments of KMC Telecom, Inc. ("KMC Telecom"), pp. 4–7; Opposition of MCI WorldCom, Inc., ("MCI WorldCom"), pp. 6–7; Comments of MediaOne Group, Inc. ("MediaOne"), pp. 2–3; Comments of Network Plus, Inc. ("Network Plus"), pp. 6–9; Opposition of Sprint Corporation ("Sprint"), pp. 6–11; Opposition of Time Warner Telecom ("Time Warner"), pp. 11–12; and Comments of xDSL Networks, Inc. ("xDSL Networks"), pp. 4–5.

5 Comments of USTA, p. 1.

access services.[6] Consequently, USTA urges the Commission to "avoid further delay and address incumbent LEC requests for regulatory relief on an expedited basis."[7]

USTA's support for the Petition for "regulatory relief" rests on 90 percent "addressability," which Bell Atlantic characterizes as a "conservative measure" of the presence of competitors.[8] However, as GSA explained in its Comments, "addressability" is not a conservative measure in the sense that it provides a lower bound on the extent of actual competition.[9] In fact, just the opposite is true, since addressability measures the potential market penetration.

Competitive LECs support GSA's assessment. For example, Hyperion Telecommunications notes that Bell Atlantic "has abandoned any attempt to make a specific showing that the level of competition in certain of its markets warrant regulatory forbearance for its special access services."[10] Hyperion continues:

> Rather, Bell Atlantic fabricated a market "addressability" concept that does not even purport to assess the competitive landscape on a market–by–market basis. In any case, it is completely unrelated to any standard that the Commission has utilized in the past in assessing market power.[11]

Thus, instead of providing data, Bell Atlantic simply makes the sweeping assertion that all of its special access services in all states (except for two) could be provided by some other carrier if Bell Atlantic were to charge unjust or unreasonable rates.[12]

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6 *Id.*

7 *Id.*, p. 4.

8 Petition, Attachment A, p. 2.

9 Comments of GSA, p. 6.

10 Comments of Hyperion, p. 2.

11 *Id.*

12 *Id.*, p. 6.

Bell Atlantic contends that "by the beginning of 1998, competitors acquired over 30 percent of the high capacity special access business, and as much as 50 percent in key business centers.[13] Unfortunately, however, there is no underlying study — or even a description of the methodology for a study — supporting these claims.

GSA explained in its Comments that Bell Atlantic fails to substantiate its claims with significant quantitative data, such as market shares, or even a systematic qualitative analysis of the impact of the competition in the respective regions.[14] Indeed, comments by other carrier parties show that the great majority of the market that Bell Atlantic attributes to "competitors" consists of Bell Atlantic circuits that end users have ordered from the IXCs, instead of directly from Bell Atlantic.[15] Thus, as AT&T explains, in nearly all cases Bell Atlantic still supplies the facilities to the "competitors" who in turn provide the services to end users. In the end, "Bell Atlantic still gets the lion's share of the revenue associated with the access expenditures related to the provision of services to end users."[16]

Moreover, the scanty data that Bell Atlantic does provide is misleading. MCI WorldCom explains in its comments that Bell Atlantic's market share figures are misleading because they are based on "DS1 equivalents," an approach that has the effect of attributing greater market share gains to competitors.[17] The "DS1 equivalent" measure overstates the competitors' inroads because it weights the types of facility for which the incumbent LECs have faced more competition — DS3 or SONET entrance facilities — more heavily than if a revenue measure were used. In the "DS1

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13 Petition, p. 7.

14 Comments of GSA, p. 8.

15 Opposition of AT&T, p. 5–6.

16 *Id.*, p. 6.

17 Opposition of MCI WorldCom, p. 15.

equivalent" measure approach, 28 DS–1 circuits are considered equal to one DS-3 circuit, although 28 individual DS–1 circuits would produce more revenue than a single DS–3 under the existing rate structures. Since the DS–3 market is more competitive than the DS-1 market, the use of "equivalent" circuits overstates the competitors' market share asserted in the Petition.

In summary, Bell Atlantic's general and anecdotal presentation does not justify forbearance from pricing rules that protect end users and foster more competition. The pricing rules are vital because incumbent LECs such as Bell Atlantic control the vast majority of local access facilities that are used to originate and terminate interstate messages and provide dedicated private lines.

B. Reduction of regulatory surveillance will further empower Bell Atlantic to constrain development of competition.

Market share estimates provide a measure of Bell Atlantic's market power, but there is an another important criterion — whether the carrier is impeding the development of more competition by placing barriers for competitors. Bell Atlantic fails this test as well, because comments by interconnected carriers show that Bell Atlantic is impeding development of more competition in at least three ways:

- by preventing collocation of competitors' facilities;
- by refusing to provide other LECs with unbundled network elements ("UNEs"); and
- by not offering efficient access to operations support systems ("OSS") needed by competitors.

Additional pricing flexibility will only enhance Bell Atlantic's ability to erect these obstacles to competition. Therefore, the company's request for forbearance from rate level and structure rules should be denied for this reason as well.

Opportunities for facilities–based competitors to expand their services through collocation arrangements are scarce in many parts of Bell Atlantic's service area.

AT&T reports that in the Bell Atlantic–South states, the company has focused its activities on requests for exemptions from the physical collocation requirements, while at the same time resisting alternative arrangements.[18] In light of these conditions and other constraints, AT&T is still required to obtain the great majority of its special access circuits from Bell Atlantic — an average of 88 percent in the states for which Bell Atlantic is requesting "forbearance."[19]

The opportunities for competitive LECs to develop their own services by using UNEs from Bell Atlantic are no more abundant. Noting that the entry barriers remain formidable, Time Warner explains that under both collocation and UNE scenarios, Bell Atlantic continues to maintain control of the path between the central office and the end user.[20] Moreover, Time Warner explains that UNEs are especially critical to competitors because "construction of duplicate facilities remains a prohibitively expensive proposition."[21]

Thirdly, competitors are not receiving the efficient access to the OSS that is required for them to develop their own services. For example, Network Plus explains in its comments that competitors are still heavily dependent on Bell Atlantic's OSS, which provides necessary capabilities for ordering and maintaining circuits.[22]

The presence of these barriers to competition augers strongly against granting Bell Atlantic additional pricing flexibility for special access services. As Time Warner explains, the requested flexibility would further enhance Bell Atlantic's ability to

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18 Opposition of AT&T, pp. 10–11, n. 14.

19 By state, the percentages are Delaware: 93%, District of Columbia: 80%, Maryland: 91%, Massachusetts: 92%, New Hampshire: 90%, New Jersey: 94%, New York: 82%, Pennsylvania: 86%, Rhode Island: 98%, Vermont: 95%, and Virginia: 84%. See *Id.*, pp. 11–12.

20 Opposition of Time Warner, pp. 16–17.

21 *Id.*, p. 17.

22 Comments of Network Plus, p. 9.

engage in strategic pricing designed to deter entry and limit competitors' expansion.[23] As a result, competitors will have relatively less power, and Bell Atlantic will have yet more ability to exercise market control. The most important consequence of this anti–competitive spiral is harm to consumers who are dependent on continued regulatory surveillance for the availability of more alternative telecommunications services at the lowest possible costs.

C. The existing price cap framework does not limit the company's ability to set prices to respond to competition.

In endorsing Bell Atlantic's Petition, USTA asserts that there is no need for pricing regulation for special access services because these are high volume services for which other carriers are aggressively competing.[24] According to USTA, "Regulation only serves to inhibit competition by limiting customer choices as to price, service availability and provider."[25]

Contrary to USTA's assertions, however, Bell Atlantic does not need forbearance from rate level and structure rules to compete on the basis of price. As GSA explained in its Comments, Bell Atlantic's request for forbearance from the rate level and structure rules in Parts 61 and 69 is, in effect, a request for permission to implement rate increases without regard to the constraints in the price cap framework, because the company already has authority to implement reductions in special access charges.

In fact, because of the provisions of Part 61 concerning "density pricing zones," any price cap LEC is now able to implement special access rate reductions that are directly targeted to local competitive conditions. The present rules permit LECs to

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23 Opposition of Time Warner, pp. 22–26.

24 Comments of USTA, p. 4.

25 *Id.*, p. 2.

establish a reasonable number of density pricing zones within each study area to be used for pricing special access services.[26] The LECs electing price cap regulation are authorized to charge different rates for special access and switched transport services in different zones.[27] If the Commission adopts Bell Atlantic's proposal to forbear from applying the rate level rules in Part 61, the company would be able to target rate reductions through the use of density pricing zones, and have no constraints on rate increases at all.

In comments opposing Bell Atlantic's proposals, Time Warner summarizes the flexibility that the existing rules provide to LECs under price cap regulation.[28] Under the present rules governing special access services, Bell Atlantic can:

- offer volume and term discounts;
- cut its averaged rates to cost;
- target rate actions to geographical areas defined by cost characteristics;
- introduce new services with relaxed procedures; and
- increase or decrease the price of any of its services in the trunking basket as long as the result does not exceed the relevant cap for the basket overall.[29]

Time Warner correctly states that these procedures provide adequate flexibility for Bell Atlantic.[30]

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26 Rule 69.123(a).

27 Rule 69.123(e)(2).

28 Opposition of Time Warner, pp. 30–31.

29 *Id.*, p. 31, citing In the Matter of Access Charge Reform, CC Docket No. 96–262, Notice of Proposed Rulemaking and Third Report and Order ("Access Charge Order"), 11 FCC Rcd 21354, paras. 305–310.

30 Opposition of Time Warner, p. 31.

. Since Bell Atlantic is requesting even more pricing flexibility, one might assume that the company now takes full advantage of the pricing options that the Commission has already granted, but this is not correct. As AT&T explains in its comments, Bell Atlantic's transport services revenue base is more than one billion dollars, but the company's transport services are priced at only $28,000 below the cap.[31] Furthermore, Bell Atlantic's transport rates are not geographically deaveraged, as permitted by the current rules.[32]

In view of these facts, Bell Atlantic's claims that it has a pressing need for even greater authority are unfounded. Indeed, the public interest would be better served if Bell Atlantic were to use the freedom it now has to lower rates access the board for all consumers.

III. COMMENTS SHOW THAT BELL ATLANTIC'S CONTROL OVER DIGITAL SUBSCRIBER LINES MANDATES CONTINUING THE COMMISSION'S SURVEILLANCE.

The comments of several competitive LECs focus on Bell Atlantic's continuing control over Digital Subscriber Line ("DSL") technologies, which include ADSL, HDSL, RDSL and several other technologies that are often called "xDSL" services.[33] The Commission recently denominated these technologies as special access services.[34] Therefore, as one of the competitive LECs explains, "Bell Atlantic's Petition, which purports to focus on special access arrangements between

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31 Opposition of AT&T, p. 18.

32 *Id.*

33 Comments of xDSL Networks and Comments of KMC Telecom.

34 Comments of xDSL Networks, Inc., p. 2, citing *GTE Tel. Operating Cos. – GTOC Transmittal No. 1148*, CC Docket No. 98–79, FCC 98–292, Memorandum Opinion and Order released October 30, 1998.

interexchange carriers and their large corporate customers, also (coincidentally, or not) "snags" xDSL services in their overbroad conceptual net."[35]

DSL services are a new technological development with few subscribers so far.[36] Therefore, it is much too early to determine when the market for these services will be sufficiently mature to justify forbearance from rate level regulation. Moreover, it is especially unwise to eliminate pricing regulations for these services since, as several competitive LECs demonstrate, Bell Atlantic still controls most of the plant necessary to provide them.

In its comments, KMC Telecom reports that Bell Atlantic and other incumbent LECs are attempting to thwart competitors' efforts to provide DSL by refusing to provide the conditioned loops and sub–loop unbundling, or to permit loop spectrum sharing, that are necessary for DSL services.[37] Moreover, xDSL Networks explains that since these services require uninterrupted copper loop plant, they cause significant dependence on the incumbent LECs' facilities, which raises important unbundling issues. The resolution of these issues will determine whether competition will flourish.[38] Thus, xDSL Networks states:

> Although it is difficult to imagine Commission approval of BA's petition in any case, even if some special access services are deregulated, xDSL services certainly should not be.[39]

GSA concurs with this assessment, and strongly urges the Commission to maintain maximum surveillance over DSL technologies.

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35 Comments of xDSL Networks, p. 2.

36 *Id.*, p. 4.

37 Comments of KMC Telecom, p. 14.

38 Comments of xDSL Networks, p. 2.

39 *Id.*

A variety of proceedings are now underway to address loop unbundling and related topics. For example, the Commission is initiating an important proceeding to develop specifications for unbundled network elements in response to the recent decision of the Supreme Court.[40] In addition, proceedings are underway to determine whether incumbent LECs can avoid unbundling obligations by providing DSL services through separate affiliates.[41]

Hyperion asserts that Bell Atlantic has either completely overlooked this issue, or its Petition is a disingenuous attempt to circumvent the ongoing regulatory process.[42] Whatever the case, in view of the regulatory activity addressing DSL services offered by the incumbent LECs, it is premature to grant Bell Atlantic's request for forbearance from enforcement of rate level and structure rules.

IV. RELAXATION OF TARIFF FILING REQUIREMENTS WILL PROVIDE OPPORTUNITIES FOR MORE COMPETITION TO DEVELOP.

Although surveillance of rate levels and structure for special access services is still necessary, GSA explained in its Comments that the Commission should adopt Bell Atlantic's proposals to forbear from applying tariffing rules for these services.[43] As GSA noted, relaxation of tariffing rules will help the company to respond to requests for bids issued by government agencies and other business users.

To participate effectively in competitive bidding opportunities, carriers must be able to present clear and timely responses to requests for proposals. Moreover, carriers must be able to submit responses with assurance that regulatory authorities

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40 *AT&T v. Iowa Utils. Bd.* __U.S.__, 119 S. Ct. 721, 733–36 (1999).

41 Comments of Hyperion, p. 3.

42 *Id.*

43 Comments of GSA, p. 4

will not subsequently nullify the terms of offers, or place any barriers to the performance of contracts. In addition, carriers must have flexibility to respond with commitments to provide any of the carrier's services at rates, terms and conditions that may differ considerably from those published in its general tariffs.

The IXCs and the competitive LECs who explain that removal of rate level and structure rules would be harmful to end users and interconnected carriers fail to acknowledge that relaxation of tariffing rules would be a pro–competitive step — perhaps because it would help Bell Atlantic to compete against them. Relaxation of tariffing rules is an issue of special concern to end users who are interested in the development of more competition from all potential sources, no matter who they may be.

Indeed, Marriott submitted comments in response to the Notice exclusively addressing the subject of tariffing requirements.[44] In those comments, this user explains:

> [t]he existence of public tariffs that are filed with advance notice is a double–edged sword. It restricts the LECs' ability to offer competitive prices, and acts as a pricing standard for competitive carriers to fix the prices for their services.[45]

Marriott continues to explain that Bell Atlantic must be able to develop customized pricing offerings at rates that may differ considerably from those published in its general tariffs.[46]

Marriott notes that it is interested in contracting for a large volume of special access services at all locations throughout the Bell Atlantic region at terms that are

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44 Comments of Marriott International, Inc. ("Marriott").

45 *Id.*, p. 1.

46 *Id.*, pp. 1–2.

beneficial to its own operations and to the carrier providing service.[47] This user correctly notes that a longer–term contract with a large customer provides a very substantial base to the service provider, and therefore has significant value for all parties concerned.[48]

GSA concurs with Marriott's observations. As GSA stated in Its Comments, contracting flexibility benefits all Bell Atlantic ratepayers, because any services provided at prices above incremental costs make a contribution to coverage of the company's common facilities costs and overheads. Although the Commission should deny Bell Atlantic's requests to forbear from enforcement of rate level and structure rules, GSA urges the Commission to adopt the company's proposals concerning tariffing requirements.

47 *Id.*, p. 2.

48 *Id.*

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 8th day of April, 1999, by hand delivery or postage paid to the following parties.

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